(2001) 09 P&H CK 0135

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 16847 of 2000

Balwan Singh		APPELLANT
	Vs	
The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat		RESPONDENT

Date of Decision: Sept. 6, 2001

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Industrial Disputes Act, 1947 - Section 10(1), 25F

Hon'ble Judges: S.S. Nijjar, J

Bench: Single Bench

Advocate: Hari Om Sharma, J, for the Appellant; R.D. Sharma, J., for the Respondent

Final Decision: Allowed

Judgement

S.S. Nijjar, J.

This petition under Articles 226/227 of the Constitution of India seeks issuance of an appropriate writ,order or direction quashing the impugned award dated 11.5.2000, passed by the Presiding Officer, Industrial Tribu-nal-cum-Labour Court (hereinafter referred to as the ''Labour Court'') only to the extent where it is held that the Irrigation Department is not an industry.

2. The petitioner was appointed on 1.7.1991 as Beldar With respondents No. 2 to 4 (hereinafter referred to as ''the management''). His services were terminated by an order dated 20.2.1994 without issuing any notice or payment of any compensation as required u/s 25-F of the Industrial Disputes Act (hereinafter referred to as ''the Act''). The petitioner raised an industrial dispute by serving a demand notice dated 19.1.1995. The appropriate Government referred the dispute to the Labour Court u/s 10(1)(c) of the Act. The workman reiterated his stand taken in the demand notice. The management filed the written statement. After completion of the

pleadings, the Labour Court framed the following issues:-

1. As per terms of reference?

2. Whether the applicant has got no cause of action/locus standi to file the present claim?

3. Whether the applicant is estopped from filing the present application by his own act and conduct?

4. Whether the Hon''ble Court has got no jurisdiction to entertain and decide the present application?

5. Relief.

3. On issue No. 1, the Labour Court came to the conclusion that the workman has worked for more than 240 days preceding the day of termination of his services. It is also held that Section 25-F of the Act has not been complied with therefore, termination of service of the petitioner is illegal and unjustified.

4. Issue Nos 2 and 3 have also been decided in favour of the workman and against the management. On issue No. 4, however, the Labour Court has held that in view of the law laid down by the Supreme Court in the case of Executive Engineer (State of Karnataka) Vs. K. Somasetty and others, , the Irrigation Department is not an industry. It has been held that the Labour Court has no jurisdiction to decide die reference. The view taken by the Labour Court is clearly erroneous. This very question has been considered by a Division Bench of this Court in the case of State of Haryana v. Jaikishan and Anr. 2000(3) RSJ 42. This judgment relates to the Irrigation Department Haryana i.e. the same management which is the management in the present case. After considering the judgment given in V.K, Somasettiy''s case (supra), it has been held that the aforesaid judgment cannot be relied upon and cannot be made the basis for nullifying he award. In that awards the Labour Court had held that the Irrigation Department Haryana was an industry. The Division Bench further observed as follows:-

"In our opinion, while deciding whether or not a person fall within the definition of workman the Court has to keep in mind the following factors:

(i) Whether the person concerned is employed in an industry;

(ii) Whether he is employed to do manual, unskilled, skilled, technical, operational, clerical or supervisory work; and

(iii) Whether such employment is for hire and reward. If these factors are found present in given case, the employee concerned will fall within the definition of workman even though the terms of emoluments may not have been reduced in writing and irrespective of the fact that such person may have been dismissed, charged or retrenched from service."

5. The Division Bench also observed that the petitioner did not produce any evidence before the Labour Court to prove that the activities of the Irrigation Department are akin to or an integral part of the sovereign functions of the State, therefore, it appears that the present case is squarely covered by the decision given by the Division Bench. Mr. Sharma Further submitted that in the present case the workman ought to have led evidence to prove that Irrigation Department is an industry. This submission of the learned counsel has to be stated only to be rejected. In view of the law lid down by the Supreme Court in the celebrated judgment of (he Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, , there can be no room at all for any doubt that the Irrigation Department Haryana is an Industry.

6. In view of the above, I do not find any substance in the submission made by the learned counsel for the respondents. For the reasons recorded above, it is held that the decision of the Labour Court on issue No. 4 is not sustainable. Consequently, the find ing on issue No. 4 recorded by the Labour Court in the award is reversed. On issue No. 1 the Labour Court has held that the Workman had worked for more than 240 days in a year preceding the termination of his services. It has also been held that there is non- compliance of Section 25-F of the Act. Consequently, the irresistible conclusion is that the order of termination is void ab initio. That being so, the workman shall be entitled to be reinstated in service with continuity of service and full back wages. The petition is allowed, the award of the Labour Court is modified. It is directed that the workman shall be reinstated in service with continuity of service and full back wages. No costs. The workman shall be reinstated as soon as a certified copy of this order is produced before the appropriate authority. The respondents are also directed to pay the arrears of wages which shall now accrue to the workman within a period of six months.